

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

DESHAWN DOZIER,

Petitioner,

v.

CIVIL ACTION NO. 5:23-cv-00089
(Criminal No. 5:15-cr-00078)

UNITED STATES OF AMERICA,

Respondent.

MEMORANDUM OPINION AND ORDER

On February 6, 2023, the Petitioner, proceeding *pro se*, filed his Motion to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody, pursuant to 28 U.S.C. § 2255 (Document 31). On March 23, 2023, the *Government's Response to Movant's 28 U.S.C. § 2255 Motion* (Document 36) was filed wherein it is requested that the Petitioner's § 2255 Motion be dismissed.

By *Standing Order* (Document 33) entered on February 7, 2023, this action was referred to the Honorable Cheryl A. Eifert, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636. On March 12, 2024, the Magistrate Judge submitted a *Proposed Findings and Recommendation* (Document 39) wherein it is recommended that the Respondent's motion to dismiss (Document 36) be granted, the Petitioner's § 2555 motion (Document 31) be denied, and this matter be dismissed and removed from the Court's docket.

Objections to the Magistrate Judge's *Proposed Findings and Recommendation* were due by March 29, 2024, and none were filed by either party. The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of *de novo* review and the Petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984).

Accordingly, the Court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge as contained in the *Proposed Findings and Recommendation*, and **ORDERS** that the Respondent's motion to dismiss (Document 36) be **GRANTED**, the Petitioner's § 2555 motion (Document 31) be **DENIED**, and this matter be **DISMISSED** and **REMOVED** from the Court's docket.

The Court has additionally considered whether to grant a certificate of appealability. See 28 U.S.C. § 2253(c). A certificate will not be granted unless there is "a substantial showing of the denial of a constitutional right." Id. § 2253(c)(2). The standard is satisfied only upon a showing that reasonable jurists would find that any assessment of the constitutional claims by this Court is debatable or wrong and that any dispositive procedural ruling is likewise debatable. Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683-84 (4th Cir. 2001). The Court concludes that the governing standard is not satisfied in this instance. Accordingly, the Court **DENIES** a certificate of appealability.

The Court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge Eifert, counsel of record, and any unrepresented party.

ENTER: April 8, 2024



IRENE C. BERGER

UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF WEST VIRGINIA